

Before the
UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Sherwood Post Office
Sherwood, Michigan

Docket No. A2012-83

PUBLIC REPRESENTATIVE REPLY COMMENTS
(February 13, 2012)

I. Summary

There are pages in the Administrative Record (AR) filed with the PRC showing the official record was modified by the Postal Service long after the Final Determination date was made.¹ The modification date aligns with the date the Postal Service electronically filed the AR with the PRC. The Public Representative (PR) believes that these AR changes raise serious credibility issues, and technically would be in violation of providing the Commission with the actual record on which the Postal Service based the Final Determination.² Of particular concern, is that the modified AR pages directly involve administrative/implementation laws related to the discontinuance procedures.

The PR believes the Commission could not fully assess its statutory obligation to determine whether the finding was in accordance with the law given these circumstances.³ Due to the importance of this issue, the PR would respectfully ask that the Commission consider remanding the Final Determination to close the Sherwood Post Office. AR evidence directly follows in the "Accordance With The Law and Observance of Procedure Required by Law" section.

¹ United States Postal Service Notice of Filing Administrative Record filed on 12/13/2011.

² The written determination sought to be reviewed or enforced, the conclusions and findings upon which it must be based under section 404(b)(3) of the Act, the notices to local patrons and the evidence contained in the entire administrative record before the Postal Service shall constitute the record on review. The record shall contain all evidence considered by the Postal Service in making its determination and shall contain no evidence not previously considered by the Postal Service (see 39 C.F.R. 3001.112).

³ 39 U.S.C. §404(d)(5).

II. Accordance With The Law and Observance of Procedure Required by Law

In these proceedings, the Commission is required to review the Postal Service's Final Determination to close a post office on the basis of the official record that was before the Postal Service (this would have been all documents used to make the Final Determination on October 17, 2011). The Administrative Record electronically filed with the PRC shows multiple pages were replaced and/ or added to the original official record long after the Postal Service had already made their determination (December 13, 2011). The Postal Service modified the official record and added these "replacement" pages on the same day the AR was filed with the PRC.

The AR pages in question show an automatic FAX Header label⁴ that includes a transmission date (December 13, 2011), sending machine FAX number,⁵ office name (POOM),⁶ transmission times (start/end) and page number. These modified / replacement AR pages involve public postings of the invitation for comments and initial proposal exhibit.⁷ The public posting date for these documents was July 06, 2011, yet the AR sheets filed with the PRC show pages with a FAX transmission date of December 13, 2011.

In total, four AR pages were added and/ or modified on December 13, 2011. Three of these relate to the Invitation for Comments (AR PDF pages 474, 490, and 492) and the Initial Proposal (AR PDF page 485). The "Invitations for Comments" have either illegible round date stamps or post office name.

⁴ http://www.ehow.com/how_7152419_set-up-header-fax.html#ixzz1m1NPIUfp

Automatic FAX header shown on AR replacement pages is included on all pages sent/transmitted from this specific FAX machine and would only show/appear on the recipient's transmitted copy. This sending FAX machine is configured to include this same FAX header on all pages transmitted to another FAX machine. These types of automated FAX machine options are typically found in the "Transmission Options" and would be applied to all outgoing faxes.

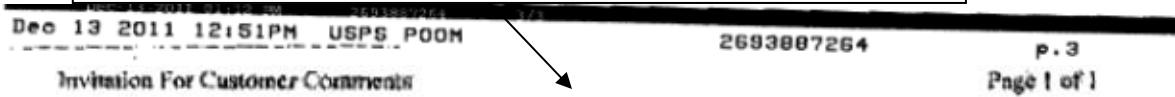
⁵ The PR confirmed that the 9-digit number shown on the AR pages is a FAX machine number. By attempting to place a telephone call directly to this number, the standard high pitched FAX sound (elicited when a land line telephone attempts to call a FAX machine number) was obtained. Publicly available web reverse look-up search engine places this FAX number to have an address location in the Kalamazoo, Michigan area.

⁶ Based on the AR info (PDF), "POOM" seems to be the acronym for the Post Office Operations Manager.

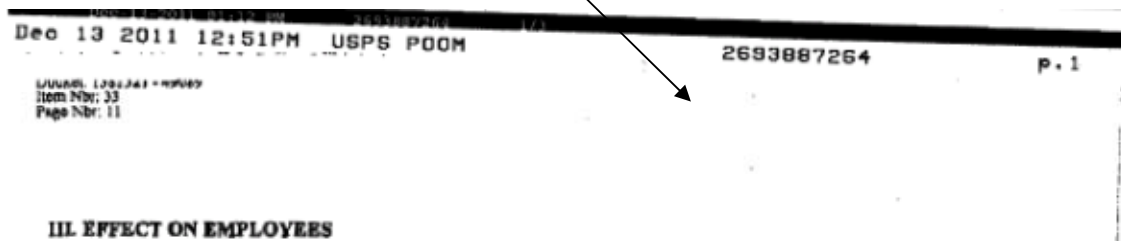
⁷ These are listed in the AR index as Item 32 and Item 33, AR document PDF pages 474, 485, 490, 492.

AR Evidence of Modifications Made After Final Determination (Four Pages)

- 1) AR Item 32-Invitation for Comment AR PDF page 474.



- 2) AR Item 33-Initial Proposal AR PDF page 485.



- 3) AR Item 32-Invitation for Comment AR PDF page 490.



- 4) AR Item 32-Invitation for Comment AR PDF page 492.



These after-the-fact AR obliterations, suggest that the Postal Service did not follow proper procedures that led to the posting of the initial proposal and invitation for comment postings.

Other Potential Violations Administrative (Implementation) Laws

It does not appear that any type of posting/invitation for comments was posted at the Athens post office.⁸ The Athens post office is mentioned in the discontinuance proposal and there is mention of the carrier operating out of Athens as well as providing retail services.⁹ In addition, it appears in the AR that several customer comments/additional pages were excluded.¹⁰

Application of the Regulations and Ambiguous Regulations Illustrated In Policy Manuals

In light of the employee labor management and postal regulations in effect/harmonized with the 2004 PO-101 Handbook of Discontinuance Procedures, portraying the workload as minimal is incorrect and would not be sufficient justification to discontinue a post office. The Sherwood Post Office workload has not changed since the last evaluation and the workload level would clearly justify a full-time Postmaster. The PR believes the Postal Service's comments related to "minimal workload" are an attempt to arbitrarily use the data to justify closing the Sherwood Post Office. Also attempting to use the walk-in revenue to support the "service needs have declined" statement when the 2009 revenue has increased and 2010 shows a small decline similar to other post offices, would not be considered substantial credible record evidence.

The PR would ask the Commission to consider the correct application, intent and interpretation of these data in light of policy statements in the PO-101 Handbook of Discontinuance Procedures (2004 version) and the Postal Operations Manual. The PR believes this may be helpful in determining arbitrary versus substantial evidence in these determinations.¹¹

⁸ AR PDF page 28 and 515.

⁹ 39 C.F.R. §241.3(d)(1) Invitation for comments must be posted at each affected post office.

¹⁰ AR at 303,495, 497 appear to be missing additional customer comments/pages.

See 39 C.F.R. §241.3(d)(4)(i) Record. The district manager, Customer Service and Sales, must keep as part of the record for his or her consideration and for review by the vice president, Delivery and Retail, all the documentation gathered about the proposed change. The record must include all information that the district manager, Customer Service and Sales, considered, and the decision must stand on the record. No information or views submitted by customers may be excluded.

¹¹ "Many agencies supplement their codified regulations with manuals and policy statements that provide more detail and illustrate the application of the regulations. When asked to determine whether an agency has properly followed its own rules, courts look to these other materials as well as to the codified regulations." Kent C. Olson, *Legal Information, How to Find It, How to Use It* (1999) Federal Administrative Law at pp. 234-235. This discontinuance was conducted pursuant to Handbook PO-101, dated August 2004, and updated with Postal Bulletin revisions through August 2, 2007.

In Handbook PO-101, August 2004 (at 19) examples of justification for discontinuance include, but are not limited to, the following:

“c. The postmaster position is vacant. Service needs in the community have declined and the recommended alternate service would provide as good or better service to the community. (Include documentation in the official record to support such statements.)”

The PR believes the AR evidence shows that the proposed alternative service could not provide as good or better service to the community.

III. Other Considerations

Regular and Effective Postal Services

The Postal Operations Manual (POM) states: “Post Offices are established to ensure that **complete** postal services are available to **all** customers in a community within specified boundaries of a named geographic place.” (POM 123.11, emphasis added).¹² The rural route carrier provides limited packaging and special services and by itself would not provide complete services. Limited access to the one time daily visit of the rural route carrier and removal of blue collection box won’t provide complete services to all members of the community. Due to the limited availability of the proposed alternative service, effectiveness will likely be diminished.

Although, the Postal Service states that the Sherwood residents must travel elsewhere for many supplies and services, many of them do not pass a Post Office during these transactions and due to their limited travel, would only do so several times a month. A number of Sherwood residents do not regularly travel outside of Sherwood due to financial restrictions, vision problems, and lack of transportation (and there are no provisions for these types of hardship cases...the POM makes it clear hardship means a physical limitation). “The Postal Service considered the effect of the discontinuance on businesses in the community and found no indication that the discontinuance would have an adverse effect.” The PR believes given the number of survey respondents who would no longer frequent local businesses that this statement is largely unsupported given the AR evidence.¹³

¹²Postal Operations Manual, Issue 9 http://www.nalc.org/depart/cau/pdf/manuals/POM/POM_9--12_08.pdf

¹³ Customers who reported they would no longer use local businesses if the Sherwood Post Office closes. AR PDF pages 33, 35, 75, 95, 105, 123, 136, 140, 175, 181, 189, 199, 203, 205, 209, 225, 241, 263, 267, 297)

Despite Postal Service claims, there is no “variety of delivery and retail options in Sherwood” and despite the “convenience of rural delivery and retail service,” Sherwood residents won’t have regular access nor complete postal services. The proposed alternative service couldn’t be considered similar or effective for some and combined with the planned removal of the blue collection box, service would be worse for most.

Customer Concerns Inaccurately, Insufficiently Addressed or Ignored

Theft and Vandalism. Postal Service Responses to community concerns¹⁴ in regards to vandalism and mail theft are inaccurate, insufficient and not current with recommended Federal regulations/business/consumer practices. The Postal Service in the AR reported that no recent reports of mail thefts or vandalism had been reported.¹⁵ The Sherriff Department reported (on the previous AR page) that there had been three mail thefts (but nothing in the past year-and-a-half). Proposal and Final Determination Postal Service responses to customer concerns simply stated there had been no mail thefts reported. Headquarters comments attempted to correct and portray these responses more accurately.¹⁶ Nevertheless, responsiveness to customer concerns is based on the responses contained in the initial proposal and Final Determination (not after the Final Determination was made).

Mail Pick Up and Blue Collection Box Removal. The PR is troubled by the removal of the blue collection box for this community. The Postal Service has responded to customer concerns related to removal of their only blue collection box by telling them they can place their mail in their own residential mailbox, and put up the red flag to alert the carrier there is outgoing mail. Those who do decide to put a lock on their mailbox would not have this option.¹⁷ This recommendation to leave outgoing mail in their unlocked mail box is not recommended by the Postal Inspection Service.¹⁸ Nor

¹⁴ AR PDF page 104, 545

¹⁵ AR PDF page 516.

¹⁶ United States Postal Service Comments Regarding Appeal, January 23, 2012 at 5.

¹⁷ AR PDF page 516, 531

AR PDF page 514: The Postal Service explained that customers may place a lock on their mailboxes. The mailbox must have a slot large enough to accommodate the customer’s normal daily mail volume. The Postal Service does not open mailboxes that are locked and does not accept keys for this purpose.

¹⁸ <https://postalinspectors.uspis.gov/radDocs/pub280.pdf>

by other government initiatives to reduce identity theft and Federal regulations related to the protection of personal identifiable information (for businesses and customers).¹⁹

The U.S. Postal Inspection Service recommends customers:

“Deposit outgoing mail at a Post Office or a blue U.S. Postal Service collection box, or give it directly to your letter carrier.”²⁰

Expecting businesses and customers to coordinate their outgoing mail with the arrival of the carrier is unreasonable and unrealistic. Removing the blue U.S. Postal Service collection box would increase the risk of identity theft.

Money Orders. The post office survey stated that there are a number of customers who use money orders to pay bills and also that the local store could be used as an alternative service provider for money orders and stamps.²¹ The AR contains no further information related to this suggestion and provides no response to the customer who voiced her concerns and the cost of having to buy checks (presumably, the one time a day visit from the carrier is not similar service and/or leaving large amounts of cash in an unlocked mailbox would be a deterrent).²²

Transportation and Financial Restrictions to Regular and Complete Access to Postal Services. There are a handful of people who do not drive, can’t afford gas/will have reduced/limited access as evidenced in the AR PDF pages at 107, 158, 207, 312, 400, 422, 448, 497, 508, 510. The Postal Service does not address customers’ financial hardships, and the POM makes it clear, special accommodations would be considered for **physical** hardship reasons.

Missing Response or No Response. Several responses in the AR appear to have been redacted. There is no response to concern 4 (PDF page 529) and concern 21(PDF page 527). Other examples of non-responsiveness to specific customer concerns can also be found in the AR PDF pages 261, 497, 499, 501.

¹⁹ <http://business.ftc.gov/documents/protecting-personal-information-guide-business>
<http://business.ftc.gov/documents/art08-protecting-personal-information-know-why>
<http://www.identitytheft.gov/reports/StrategicPlan.pdf>

²⁰ <https://postalinspectors.uspis.gov/radDocs/pub280.pdf>

²¹ “There are a handful of people who live in town that do not drive. They walk to the Post Office and they rely on us for their money orders and stamps to pay monthly bills. They could be accommodated by allowing the Sherwood Party Store to sell money orders and stamps.” See PO Survey at AR PDF page 23.

²² See customer comments at AR PDF page 158.

Effect on Employees

The notes related to the effect on the employees, number and type are inconsistent throughout the AR. In the PO Survey, it notes that: "One regular and one RCA will be moved to Union City."²³ The initial proposal states that the non-career postmaster relief may be separated from the Postal Service and no other Postal Service employee will be adversely affected.²⁴ The responses provided to customer concerns report that the same carrier will be operating out of the Athens Post Office.²⁵ Three types of employees are mentioned in the AR: RCA, OIC, and PMR. The RCA and PMR are both non-career employees and the OIC is a career employee. The effect on the employees has been inadequately considered due to conflicting information in the AR (number and reports of either operating out of Athens or Union City Post Offices).

Economic savings

Not all major cost factors have been reported in the AR. No CBU cost has been provided and this would be in violation of the requirements for the economics analysis.²⁶ Presentation of the TOEs (total operating expenses) here would not necessarily be a savings as the rural route costs are approximately this amount and would largely be transferred to the Union City Post Office.

²³ <http://www.postalexam.com/postal-jobs/details/rural-carrier-associate/>

The Rural Carrier Associate (RCA) job is a non-career long-term relief position. RCA's cover for full-time career Rural Carriers.

²⁴ Item 33 at AR PDF page 484, two non careers are mentioned RCA, PMR and one career OIC mentioned. The Postmaster Relief / Replacement (PMR) job is an unusual non-career relief position.

<http://www.postalexam.com/postal-jobs/details/postmaster-relief-replacement/>

Also AR PDF page 18, one career and one RCA is mentioned.

Item 33 at 484, "The noncareer postmaster relief may be separated from the Postal Service. No other Postal Service employee will be adversely effected." PO-101 Handbook states that whether or not this is voluntary should be stated.

²⁵ AR PDF page 515.

²⁶ 39 C.F.R. §241.3(c)(iv) The proposal must include an analysis of the economic savings to the Postal Service from the proposed action including the cost or savings expected from each major function contributing to the overall estimate.

IV. Conclusion

Due to the limited access and availability of the proposed alternative service, the PR can only conclude that the regularity and effectiveness of the postal services provided would be substantially diminished for the Sherwood community. In addition, the PR believes the legal violations evidenced in the AR would be sufficient cause for the Commission to consider remanding the Final Determination to close the Sherwood Post Office.

Respectfully submitted,

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